IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 136 OF 2002.

Shri Venctesh Purshottam Kamat,
aged about 60 years, r/at H.No.
79, Comba Alto, Margao, Goa. ... Petitioner.

Versus

1. Goa Industrial Development Corporation Government of Goa Undertaking, with office at Shree Sraswati Mandir Building, 18th June Road, Panaji.
2. Shri Prabhakar Gaunkar, Chairman Goa Industrial Development Corporation with office at Shree Sraswati Mandir Building, 18th June Road, Panaji.
3. Pradeep Shet, c/o Messrs Mahalsa Foods, F-22 Kurtarkar Commercial Arcade, Behind Canara Bank, Ponda, Goa. ... Respondents.

Mr. M.B. D'Costa with Mr. J.A. Lobo, Advocates for the Petitioner.

Mr. M.S. Sonak with Mr. D.G. Pangam, Advocates for the Respondents 1 and 2.

Mr. A.N.S. Nadkarni with Mr. H.D. Naik, Advocates for the Respondent No. 3.

Coram: D.G. DESHPANDE AND
P.V. HARDAS, JJ.

Date: 13th January 2003.

ORAL JUDGMENT (PER HARDAS, J.).

This petition under Article 226 of the Constitution of India has been filed praying for a relief of writ of mandamus for withdrawing the decision to allot a plot admeasuring 2604 sq. metres to the third respondent and for a writ of mandamus directing

the respondents 1 and 2 to consider the allotment of 2000 sq. metres to the petitioner and to complete the sub-division and other formalities required by law. This Court had issued rule on 12th June 2002 and had directed the parties to the petition to maintain status quo in respect of the plots and had further directed that no party shall proceed with the construction on the disputed plots.

2. The brief facts necessary for the decision of this petition are as under:-

The first respondent is a Government company fully owned and controlled by the Government of Goa and the main object of the first respondent is to bring about industrial development in the State of Goa. The second respondent is the Chairman of the first respondent and the third respondent is a person whose allotment of the plot is challenged by the petitioner.

In the year 2000 the Government of Goa acquired about 6840 sq. metres of plot bearing Survey Number 157, Sub-Division 1 for the first respondent for setting up utilities at Cortalim Village, Mormugao Taluka, Goa. The petitioner is at present running a petrol pump adjoining the land acquired for the first respondent. The petitioner, by his letter dated 24th

February 2000 addressed to the Chairman of the first respondent, requested that the land admeasuring 6840 sq. metres be leased to the petitioner for extending necessary facilities to the highway commuters. The first respondent, by its letter dated 14/16th May 2001, informed the petitioner that his case had been approved by the Board for allotment of part area admeasuring 2000 sq. metres at the rate of Rs. 205/- per sq. metre. The letter further informed the petitioner that the detailed terms and conditions of the allotment would be stipulated in the Allotment Order and Lease Deed. The petitioner was, therefore, requested to submit a demand draft for Rs. 82,000/- towards 20% premium amount of the plot within 15 days from the date of the aforesaid letter and also submit other details as are required in the prescribed application form to enable the first respondent to process his case for allotment. In the last paragraph of the said letter it was made clear to the petitioner that "the allotment order will be issued after sub-division of the said plot." (Emphasis supplied). Alongwith the letter a sketch was annexed. The sketch showed that the entire area of 6840 sq. metres of the acquired land was proposed to be sub-divided into two plots admeasuring 4840 sq. metres and 2000 sq. metres. Certain area left was declared as open space. Thus, tentatively the petitioner was informed that he would be given a plot admeasuring 2000

sq. metres as per the decision of the Board. The petitioner, in compliance with the said order, paid Rs. 82,000/- towards 20% premium amount of the plot. In the meanwhile, the first respondent, by its letter dated 1st/4th October 2001, informed the petitioner that the proposal for sub-division of the plot was under process. By the said letter, the petitioner was also informed that the allotment was subject to sub-division and conversion of plot. By the said letter, the petitioner was again requested to apply in the prescribed application form to enable the first respondent to take further steps in the matter. The first respondent again, by its letter dated 7th/8th January 2002, in continuation of its letter dated 14th/16th May 2001, informed the petitioner that the plot had been sub-divided into two plots as per the enclosed layout plan and that an area admeasuring 1117 sq. metres had been earmarked in the name of the petitioner for providing the basic services for the existing petrol pump. The petitioner was also informed that he will have to bear the expenditure towards cost of the plot, sub-division charges, conversion fees, construction of road and any other related common facilities provided/to be provided for the development of these plots. The petitioner was again requested to apply in the prescribed application form and pay the balance premium amount of Rs. 1,46,985/- alongwith annual lease rent of

Rs. 4,580/- by a demand draft on or before 15th January 2002 "in order to process your case for allotment". (Emphasis supplied).

3. In response to the letter quoted above issued by the first respondent, the petitioner by his letter dated 14th January 2002 expressed his dismay and shock that he had been allotted 1117 sq. metres instead of 2000 sq. metres, which the petitioner claimed had been allotted to him some time in May 2001. The petitioner submitted that the act of sub-dividing the plot allotted to him was arbitrary, politically motivated and to please the third respondent, who had political influence. The petitioner, further, made a grievance that the third respondent was nowhere in the picture when the petitioner had applied for 6000 sq. metres of plot and expressed his apprehension that the third respondent had waited till such time till the appointment of the second respondent as Chairman of the first respondent, as both belong to the same political party. The petitioner further stated in the said letter that his agreement to accept only 2000 sq. metres against his initial request for 6000 sq. metres "was only under extreme political and emotional pressure". The first respondent, by its letter dated 6th/8th February 2002, reiterated what had been stated by it earlier and informed the petitioner that it had issued

the letter dated 14th/16th May 2001, subject to the sub-division of the plot. The first respondent, by the aforesaid letter, again called upon the petitioner to comply with the conditions mentioned in its letter dated 7th January 2002.

4. The first respondent has filed its affidavit and has stated that the State had acquired a plot of land admeasuring 6840 sq. metres bearing Survey No. 157/1. According to the first respondent, the petitioner had applied for allotment of an area of 2000 sq. metres and the third respondent had applied for allotment of an area of 4000 sq. metres from out of the said total area of 6840 sq. metres. The applications of the petitioner and the third respondent were placed before the Board of the first respondent and the Board, in its meeting held on 25th April 2001, considered the applications and resolved that the petitioner be allotted an area of 2000 sq metres and the third respondent be allotted the remaining area, that is, 4840 sq. metres. The petitioner and the third respondent were, accordingly, informed and it was made clear to them that the allotment orders would be issued after sub-division of the plot. It is further stated in the affidavit that any plot once approved by the Board for allotment is sent for sub-division to the Town and Country Planning Department. After sub-division, an

area of 4696 sq. metres was available for allotment. It is also stated in the affidavit that accordingly the prorata reduction had to be effected in the area available for allotment to the petitioner and the third respondent. The allegations of arbitrariness, unreasonableness, malafide, etc., were denied. It has been specifically stated in the affidavit that the second respondent was appointed as a Chairman by Notification dated 27th December 1999, that is, much prior to the application of the third respondent. The allegation levelled by the petitioner, therefore, that the third respondent was waiting for the appointment of the second respondent as Chairman, was denied. Thus, the area available for allotment to the third respondent was reduced from 4000 sq. metres to 2650 sq. metres and the area available for the petitioner was reduced from 2000 sq. metres to 1117 sq. metres.

5. The second respondent has also filed an affidavit denying the allegation of malafide levelled by the petitioner against him.

6. The third respondent has filed his affidavit in which it is stated that he had applied in the prescribed form and has complied with all the conditions imposed by the first respondent and, accordingly, the allotment Order came to be issued in his favour and he

has already commenced the construction. During the course of hearing it was pointed out to us that the third respondent had initially applied for 1000 sq. metres but, thereafter, had requested for 4000 sq. metres. The third respondent had applied in the prescribed form giving details which were required including submission of S.S.I. Registration Certificate. Undeniably the sub-division was approved by the competent authorities after deducting certain area for road widening, open space, etc., and from out of the total area available for allotment, the effective area was reduced from 6840 sq. metres to 4696 sq. metres. There has been a uniform reduction of the area sought for by both the petitioner and the third respondent.

7. Mr. D'Costa, the learned counsel appearing on behalf of the petitioner, has urged before us that by virtue of the letter dated 14th/16th May 2001 issued by the first respondent, the first respondent had agreed to allot 2000 sq. metres of plot to the petitioner. Thus, according to him, it is a case of concluded contract. Secondly, it is urged before us that the respondents were aware that certain area of the plot would be lost in the process of sub-division and the respondents, therefore, ought to have carved out a plot of 2000 sq. metres for the petitioner, giving the remaining area to

the third respondent.

8. Mr. Sonak, the learned counsel appearing on behalf of the respondents 1 and 2, has urged before us that what was communicated to the petitioner, by the letter dated 14th/16th May 2001, was only an approval of the Board to allot 2000 sq. metres to the petitioner. The said approval was subject to sub-division and an allotment order could only be issued after sub-division of the plot. Thus, according to Mr. Sonak, there was no concluded contract on the basis of which the petitioner can claim a legal right for the allotment of 2000 sq. metres. Mr. Sonak had faintly urged that the petitioner did not apply in the prescribed form and, therefore, was disentitled for any allotment of the land in his favour.

9. Mr. Nadkarni, learned counsel appearing on behalf of the third respondent, has urged before us that in the case of the third respondent there is a concluded contract as the Allotment Order has been issued by the authorities on 5th December 2001. The third respondent has, accordingly, commenced construction. The allegation of malafide is extremely vague and does not merit any consideration whatsoever. Thus, the respondents state that the petition deserves to be dismissed.

10. Perusal of the letter dated 14th/16th May 2001 clearly shows that the case of the petitioner had been approved by the Board for allotment of 2000 sq. metres. It was also stated in the said letter that the detailed terms and conditions of the allotment would be stipulated in the Allotment Order and Lease Deed. The last paragraph of the letter makes it very clear that the Allotment Order will be issued after sub-division of the plot. In the subsequent letters issued by the first respondent this fact is reiterated. It is, thus, clear that there was no concluded contract to allot 2000 sq. metres of the area to the petitioner. His case for allotment of 2000 sq. metres was approved but that approval was subject to the area which would be available after sub-division of the plot. The third respondent had initially applied for 1000 sq. metres of the plot but, subsequently, had submitted a revised proposal for allotment of additional 3000 sq. metres of plot. After sub-division, the area which was available for allotment was 4696 sq. metres. The petitioner, who had requested for allotment of 2000 sq. metres was offered 1117 sq. metres of plot and the third respondent, who had requested for 4000 sq. metres was allotted 2605 sq. metres. There is a uniform reduction in the area applied for, in respect of both, the petitioner and the third respondent. The uniform reduction cannot be faulted as the area which was

available for allotment after sub-division was 4696 sq. metres. There does not appear to be any arbitrariness in the reduction in area of the petitioner as the area of the third respondent was also reduced. In the absence of any concluded contract between the parties, the petitioner cannot have any legal right to claim that he be allotted 2000 sq. metres of the area for which he had applied. The allegation of malafide levelled against the second respondent is not factually correct. The third respondent, after allotment, has paid the necessary charges and has commenced the construction. Thus, in our considered opinion, there is no substance whatsoever in the claim of the petitioner for allotment of 2000 sq. metres of the area.

11. The ground of promissory estoppel is also not available to the petitioner as it had not been held out by the first respondent that the petitioner would be allotted 2000 sq. metres of the plot. The petitioner in clearest possible terms was informed that the allotment would be subject to sub-division of the plot. If after sub-division the first respondent found that neither the petitioner nor the third respondent could be allotted the area for which they had applied for and, consequently, had reduced proportionately the area of the petitioner and the third respondent, the action of the first respondent cannot be faulted on the ground of

arbitrariness or malafide. In our considered opinion, therefore, no interference is called for by this Court in the present petition.

12. In the result, therefore, the Writ Petition is dismissed with no order as to costs. Rule stands discharged. It is needless to mention that the interim order stands vacated.

(D.G. DESHPANDE)
JUDGE.

(P.V. HARDAS)
JUDGE.

ed's.